

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1633 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

R S PRAJAPATI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR IS SUPEHIA for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/09/2000

C.A.V. JUDGEMENT

1. The petitioner abovenmaed is a Corporation incorporated under the Road Transport Corporation Act, 1950. The petitioner - Corporation is also the employer

of the respondent. The petitioner has filed this petition under Article 227 of the Constitution of India challenging the order dated 13.9.1990 passed by the learned Industrial Tribunal, Ahmedabad in Reference (IT) No. 83 of 1987 under which the learned Tribunal partly allowed the said reference against the petitioner and in favour of the respondent and directed that so far the order of the petitioner holding the respondent guilty in the departmental proceedings is concerned, the said decision is not altered but it is confirmed. However, the learned Tribunal came to the decision that the order passed by the petitioner against the respondent for stoppage of increment for 7 years with permanent effect is modified and new punishment has been inflicted against the respondent for stoppage of increment for 3 years without permanent effect. The learned Tribunal directed the petitioner that because of the aforesaid modification, the monetary loss suffered by the respondent, be paid up to the respondent within six months. The learned Tribunal further directed that there shall be no order as to costs. Feeling aggrieved by the said award of the learned Tribunal, the petitioner has preferred this petition before this Court under Article 227 of the Constitution of India.

2. It has mainly been contended here that when the Tribunal has found that the procedure has been followed by the petitioner in conducting the departmental proceedings against the respondent and when it has also been held that the respondent has been rightly held guilty under the said departmental proceedings, then, in that event, it would not just be and proper to alter the punishment. It is more so when the petitioner has not imposed an extreme penalty of dismissal or removal from the service. It is the contention of the petitioner that the said decision of the learned Tribunal was not right in law. That the learned Tribunal is empowered to substitute the penalty only in case of termination of service under Section 11 A of the Industrial Disputes Act. That in the facts of the case, there being misconduct and misappropriation of public fund, the respondent workman could not have been continued any longer in service. That it has been consistently held that in case of misappropriation of public funds, the disciplinary authority was justified in terminating the services of the employee. That Appellate authority has taken liberal view and instead of passing an order of dismissal, penalty of stoppage of increment for 3 years has been imposed upon the respondent which has future effect also. That this punishment cannot be said to be harsh. That therefore the learned Tribunal was not right

in law in setting aside the said order of penalty and substituting the aforesaid penalty of stoppage of increment for a period of 3 years without future effect. That therefore, the judgment and award of the learned Tribunal are illegal, erroneous and deserve to be quashed and set aside. The petitioner has therefore prayed that the present petition be allowed and the appropriate writ, order or direction may be issued for quashing and setting aside the judgement and award of the learned Tribunal dated 13.9.1990 in Reference No. (IT) 83 of 1987.

3. On receiving the said petition, rule was issued and ad-interim relief in terms of para 7 B was granted by the Division bench of this Court on 11.3.1992. The respondent appeared in the matter and contested the same. I have heard learned advocates for the parties and have perused the papers.

4. Now, it is clear that in the present case, the charge against the petitioner is that when he was on duty as conductor in Bus No. 8531 which was on route from Fatehgadh to Radhanpur on 18.9.1990, the bus was checked at about 9.00 a.m. in the middle of the said route. That at that time, following irregularities were noticed by the checking officer.

- (i) Two passengers were found without tickets.
- (ii) Five passengers of one group were found in possession of tickets which were used previously and reused and reissued to them.
- (iii) Two passengers of one group with the aforesaid facts.
- (iv) Two passengers of one group with aforesaid facts.
- (v) One passenger with aforesaid facts.
- (vi) Similar other cases.
- (vii) It was noticed that when cash was checked Rs. 27.50 were found short, then what should have been the cash on hand with the respondent.

5. On aforesaid allegations, the chargesheet was issued and departmental inquiry was conducted by the

petitioner. It went on for number of occasions and ultimately, inquiry officer held that the respondent was guilty in respect of the aforesaid charges. On the basis of the said report of the inquiry officer, show cause notice was issued to the respondent on 28.10.1993. The respondent required time for submission of reply to the said show cause notice which was issued to him. Thereafter, the disciplinary authority recorded the finding that he accepted the report of the inquiry officer and found the respondent guilty for the aforesaid charges. Thereafter, the disciplinary authority passed order dated 8.12.1983 at Annexure-B directing stoppage of increment of the respondent for a period of 7 years with permanent effect.

6. The respondent carried the matter in First Appeal No. 37 of 1984 and the Appellate Authority i.e. Divisional Controller considered the said appeal of the respondent and by an order dated 31.8.1984, dismissed the said appeal of the respondent. Then, the matter was carried before the learned Industrial Tribunal being Reference No. (IT) 83 of 1987. The learned Tribunal had also found that the said authorities were right in holding that the respondent was guilty for the aforesaid charges. However, on the point of quantum of punishment the learned Tribunal found that the respondent has long span to serve and, therefore, the respondent will be put to great monetary loss if there is stoppage of increment for a period of 7 years with permanent effect. Therefore, the learned Tribunal found that it was just and proper to substitute the punishment of stoppage of increment for 3 years without permanent effect in place of stoppage of increment for a period of 7 years with permanent effect. The learned Tribunal therefore directed accordingly by its order dated 17.9.1990. The said award can be found at Annexure-C at page 35 to the petition.

7. The learned advocate for the petitioner has vehemently contended that the learned Tribunal has committed serious error in law in reducing the quantum of punishment inflicted upon the respondent. For this purpose, he has relied upon the previous faults committed by the present respondent in past. The fault card can be gathered at Annexure-E at page-45 to this petition in which the defaults can be found which are as under :

(i) Passenger was found without ticket

(ii) On 15.8.1979 there was a shortage of cash
of Rs. 1.50 ps.

- (iii) On 24.3.1980, it was noticed that the respondent had collected the fare but had not issued tickets to the passengers.
- (iv) On 30.6.1990, one passenger was found travelling in bus without ticket.
- (v) On 26.5.1980, one passenger was found travelling in bus without ticket.
- (vi) On 21.9.1979, similar position was noticed.
- (vii) On 26.8.1981, bus was required to carry 54 students and 4 teachers and list was also there, but two additional persons were found travelling without tickets in the said bus.
- (viii) On 6.5.1982, one passenger was found travelling without ticket and ticket charges were also not collected.
- (ix) On 13.5.1982, tickets charges were recovered from two passengers but the tickets were not issued and the sheet showing tickets charges was also not found with the respondent.
- (x) On 22.11.1982, one passenger was found travelling without ticket.

8. This shows that the petitioner had at least 10 defaults at his credit before the present event had taken place. The card further shows that even thereafter, on 20.2.1984, a passenger was found travelling without ticket and finding has been recorded that the respondent acted dishonestly in the said matter. This shows that even after the event leading to this petition, the respondent has not shown improvement. It has to be noted that the incident in question is of 18.9.1980 and thereafter, at least 5 defaults have been recorded against the respondent. It would mean that at least 6 defaults have taken place before the present event and 5 defaults after the present event. This shows that the respondent can be treated to be a consistent constant defaulter.

9. At one stage, it has been argued that the non-issuance of ticket to a passenger would not put the

petitioner corporation to a great loss. But if the said event happens regularly and repeatedly in so many buses of so many routes for so many days round the year then total loss to be suffered by the petitioner corporation, will be a huge one. At the same time, the petitioner corporation is a public body and the act of the respondent amounts to misuse of public money. The officers and servants of the Corporation are also public servants and, therefore, they also owe responsibility to the public at large. Their responsibility is to work with honesty, integrity and sincerity. If the element of honesty is lacking then it is very difficult for corporation to retain such persons in employment. In the present case, we find number of occasions where the respondent has shown attitude of collection of ticket charges and non-issue of tickets to the passengers. Therefore, there is consistent default on the part of the respondent. In the aforesaid view of the matter, when the respondent is found to be a continuous defaulter and when the charges are collected and tickets are not issued, on the one hand it would amount to serious criminal misappropriation of public money and on the other hand, it would amount to cheating the public at large since the petitioner corporation is a public body. Therefore, this may amount to be an offence committed by the respondent as public servant against the public at large involving public money.

10. On this aspect of the case, we can refer to a decision in the case of Gujarat State Road Transport Corporation Vs. Jamnadas Becharbhai reported in 1982 GLH 1057, there, it has been clearly laid down that Labour Court should think more than twice before directing reinstatement in the same post. That misappropriation by a bus conductor would make successful working of a public corporation impossible. That the Labour Court can, depending upon facts and circumstances of the case and of the offender, direct that he should be absorbed in the workshop section or some other similar post which does not involve daily handling of money. This shows that the Division Bench of this Court has long back considered this aspect of the case and found that the dishonesty in a public body cannot be tolerated and treated very lightly.

11. Almost similar principle can be gathered from the case of Gujarat State Road Transport Corporation Vs. Kachraji Motiji Parmar reported in 1993(1) GLR 302. There, it has been observed that the Labour Court does not have unguided powers to set aside justified order passed by Management and that the power under Section 11

A has to be exercised judicially and Labour Court can interfere with the decision of the Management only when the punishment imposed is highly disproportionate to the degree of guilt of the workman.

12. In yet another case, again in the case of Gujarat State Road Transport Corporation Vs. Parshottam Premji Tank, reported in 2000(2) GLH 258, this Court has taken a slightly different view. There it has been observed that before imposing extreme punishment, disciplinary authority should keep in mind the all facts of case. There the delinquent was dismissed after regular departmental inquiry for non-issuance of tickets. The Labour Court has reinstated the delinquent with 50% back wages. There, it was found that there was nothing wrong committed by the Labour Court when the petitioner had imposed extreme penalty. The learned advocate for the respondent has heavily relied upon this decision arguing that this being a recent decision of this Court, this Court should follow the same. There is no difficulty in following the said decision but at the same time we have to consider previous two decisions referred hereinabove which are the decisions recorded by the Division Bench of this court, whereas the third decision referred to by the learned advocate for the respondent has been rendered by the learned Single Judge of this Court. Therefore, the principle enunciated in the former two decisions rendered by the Division Bench of this Court, will have preference over the third decision which has been rendered by the learned Single Judge.

13. Another aspect of the case is that in the present case, we have on record the previous defaults committed by the respondent and all the defaults committed previously are similar to the defaults committed by the respondent in the present also. The record further shows that even after the previous and present defaults, the respondent did not stop and did not show improvement in his conduct, but he continued to commit similar defaults. Even thereafter, attitude of committing defaults of collecting tickets charges and not issuing tickets and thereby, putting the petitioner corporation to receiving monetary loss has been continued. Moreover, in the aforesaid third case relied upon by the learned advocate for the respondent, the delinquent was dismissed and extreme penalty was imposed and in the present case though the respondent had previous defaults, the petitioner corporation had extended leniency and had not imposed extreme penalty of dismissal. Leniency has been shown and increments have been stopped for a period of 7 years with permanent effect. The learned Tribunal has

observed that this would put the respondent to a monetary loss. No other reasons have been shown or assigned by the learned Tribunal for reducing the quantum of punishment. This would mean that the respondent can continuously put the petitioner to a monetary loss and would put himself to illegal gain and when such defaults have been noticed and proved against the respondent, the petitioner cannot impose little severe penalty on the respondent, There is no reason to adopt such a policy. The learned advocate for the respondent has relied upon the observation made in para.5 of the third decision of G.S.R.T.C. Vs. Parsottam Premji Tank (supra). There, it has been observed that the extreme punishment was inflicted on the worker when he exhibited some sort of negligence. It has also been observed that serious question that arises in such cases would be, besides the legality of the punishment as well, that while imposing a punishment the employer should first consider whether the delinquent committed the offence with intent to make unlawful gain and to pilfer the revenue of the employer. Now, in this case, it can be reasonably inferred in the present case that the respondent has put the petitioner corporation to a monetary loss. Moreover, the extreme punishment has not been inflicted but the department has considered it just and proper to retain the respondent in service and to impose such punishment with a view to provide an additional opportunity to the respondent to show improvement. At the same time, strict action is required to be taken by a public body with a view to set example so that the respondent may not repeat the said misconduct. Same way, it may also deter other employees in a public body committing or intending to commit similar faults. In that view of the matter, punishment imposed by the petitioner authority cannot be treated harsh and excessive considering the default of the petitioner in the present case and considering the post conduct as well as the conduct subsequent to the event in question.

14. In the aforesaid view of the matter, I am of the view that the learned Tribunal has not given cogent reason for disturbing the quantum of punishment imposed upon the respondent. Therefore, the order cannot be treated to be a legal and proper. At the same time, the punishment inflicted upon the respondent cannot be treated to be harsh having regard to gravity of charge levelled and pressed against the respondent, having regard to his conduct before and after the event in question, having regard to the fact that there is no finding recorded by the learned Tribunal that the petitioner has committed violation of principles of

natural justice or that there was procedural defect or that the respondent was not provided with a reasonable opportunity to deferred his case. Therefore, there was no reason for the learned Tribunal to interfere with the said punishment. Same way, this Court does not find any reason to interfere with the said quantum of punishment imposed upon the respondent by the petitioner Corporation. In that view of the matter, the judgement and award of the learned Tribunal cannot be sustained and it has to be quashed and set aside.

15. In the aforesaid view of the matter, I am of the view that this is a fit case for exercising powers under Section 227 of the Constitution of India in order to quash and set aside the judgment and award of the learned Tribunal. In that view of the matter, the present petition is allowed and judgement and award of the learned Industrial Tribunal, Ahmedabad recorded in Reference No. (IT) 83 of 1987 on 13.9.1990 are quashed and set aside. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(D.P.Buch,J)

(vipul)